



California Fair Political Practices Commission

April 6, 1987

Wes Bannister
15662 Chemical Lane
Huntington Beach, CA 92649

Re: Your Requests for Advice
Our File Nos. A-87-066 and
A-87-071

Dear Mr. Bannister:

This is in response to your letters dated February 23, 1987, and February 24, 1987, concerning your duties as a Huntington Beach City Councilmember under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} In a recent telephone conversation, you indicated that the decision on which you sought advice in your February 23 letter has already occurred. You indicated that you abstained from that vote. The Commission does not provide advice regarding past actions. (Regulation 18329(b)(8)(A), copy enclosed.) Accordingly, we have not addressed the issues raised in that letter. The question raised in your February 24 letter is addressed below.

QUESTION

Are you prohibited from participating in a decision regarding an appeal from the denial of a sign permit by a client of your insurance agency?

CONCLUSION

You are prohibited from participating in the decision on the appeal from the denial of a sign permit for your client.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

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FACTS

You own a 100-percent interest in an insurance agency. One of your clients owns a service station. The client was denied a sign permit by the planning commission and is appealing the matter to the city council. In our telephone conversation, you indicated that your client wishes to replace an old sign which is in violation of the city's sign ordinance, but which was "grandfathered in" when the ordinance was adopted.

ANALYSIS

In a previous advice letter, we advised you that you may not participate in any decision in which a client who has provided \$250 or more in commission income to your insurance agency "appears" before you in connection with a decision. (Regulation 18702.1.) (Advice Letter to Wes Bannister, Nos. A-87-029 and A-87-050 (Feb. 20, 1987) (copy enclosed).) I am assuming for purposes of this letter that the client referred to in your advice request has provided \$250 or more in commission income to your insurance agency in the past 12 months. Therefore, you may not participate in the decision regarding the sign permit appeal if your client appears before you in connection with the decision.

Regulation 18702.1(b) provides:

(b) A person or business entity appears before an official in connection with a decision when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;

(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

Your client is "appearing" before you by initiating the appeal of the sign permit decision.

Regulation 18702.1(c)(3) provides:

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

* * *

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(3) Although disqualification would otherwise be required under subsection (a)(1), (a)(2), or (a)(3) the decision will have no financial effect on the person or business entity who appears before the official, or on the real property.

Your client undoubtedly is seeking the sign permit because he believes the sign will attract more customers or will be less expensive than other alternatives, such as retaining the existing sign, providing a new sign which complies with the ordinance, or having no sign at all. It is unlikely that denial of the sign permit will have no financial effect on your client. Therefore, you may not participate in the decision regarding the sign permit appeal.

If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

John G. McLean
By: John G. McLean
Counsel, Legal Division

DMG:JGM:plh
Enclosure



BANNISTER & ASSOCIATES
INSURANCE

27-2
F P P C
FEB 27 10 47 AM '87

February 24, 1987

Mr. John G. Mc Lean
Counsel, Legal Division
California Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Re: Request for Opinion

Dear Mr. Mc Lean:

One of my insureds, not the same one this time, owns a service station and is coming before the Council on an appeal for a sign in front of his property. Apparently, the existing sign was denied by the Planning Commission and he is appealing it now to the City Council.

I see no financial impact to me, and since there is an existing sign and this is merely a replacement, very little change in his financial impact for gross receipts, however, he is an applicant.

Can I or can I not vote?

Thank you very much.

Sincerely,

Wes Bannister

WB/bu

P.S. I am still waiting for the decision on the lawsuit in my earlier request which is becoming a critical issue now. Each day that it delays action is making the situation worse so I would appreciate your special attention to that one as quickly as possible and the response as quickly as possible.

Thank you very much.



BANNISTER & ASSOCIATES
INSURANCE

F P P C
FEB 27 10 47 AM '87

February 23, 1987

Mr. John G. McLean
Counsel, Legal Division
California Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Re: General Plan Amendment

Dear Mr. McLean:

I want to call you attention to the fact that I did not receive your letter, dated February 13th, at City Hall, until the 20th. It was date stamped in City Hall on the 18th, which was one day after the meeting involving Angus, however, Angus was dropped therefore no action was necessary as far as the Council was concerned so the position is moot. I just want you to know that when you mail the mail to City Hall, it takes about seven days to get through the system into my hands. That is for future reference, and perhaps a notation on your file that all mail should be sent to my office at 15562 Chemical Lane, Huntington Beach, if you want me to get it on time.

At any rate, the reason for this letter is a totally different situation.

Recently the Planning Commission of the City of Huntington Beach heard a request for a General Plan Amendment changing the zoning in the General Plan on a piece of property from R1 to R2. That was done to conform the General Plan to the current zoning of that property, which is currently zoned as R2.

As you may have already guessed, the property is owned by one of my insureds.

In order for the General Plan changes to be finalized, it will be necessary that the Council address that General Plan amendment and take action.

In an early conversation with you, and in accordance with some of the legal documents you sent, it was indicated that if an action involved a financial interest, however the action was uniformly beneficial or effected all people equally, that the vote was acceptable. In this case, it is important to note three major conditions:

1. The applicant is not my insured. The applicant is the City of Huntington which is requesting the General Plan Amendment change to bring conformance to the General Plan and zoning in existence.

2. Although the land is wholly owned by my insured, and the impact of any condition would effect him directly, it is a General Plan Amendment and the General Plan is uniformly applied to all citizens.
3. There is no financial impact to the General Plan Amendment, particularly noting that the property is already zoned correctly.

I would appreciate an opinion from you as soon as possible regarding this action. We have some time on this one, since it will not be for at least six weeks, however, since my insured is directly involved, and although I feel comfortable in voting on the issue with no conflict, I did want you to be aware and to send me through an opinion.

Thank you very much.

Sincerely,



Wes Bannister

WB/bu

Memorandum

To : File

Date : April 2, 1987

From : FAIR POLITICAL PRACTICES COMMISSION

John G. McLean

Subject : Advice Request Nos. A-87-066 and A-87-071

I called Councilmember Bannister on 3/25 to obtain more information on these letters. He was not there and did not call me back until 4/1. The file is not technically due until 21 working days after all information is received. This would make the letters due in early May. For practical purposes I believe we should try to get the letter out by April 6.

JGM:plh